

Ordinance No. 2002-154

Sponsor Mr. McCarthy, Mrs. Heydorn, Mr. Crossland, Mr. Smith,
Mr. Teodosio, Ms. Norris, Mr. Callahan, & Mr. King

Date April 29, 2002

An Amended Substitute Ordinance creating and enacting Title Seven of Chapter Nine of the Codified Ordinances of the County of Summit establishing Riparian Setbacks within the County of Summit.

Whereas, flooding is a threat to public health and safety and public and private property within the Cuyahoga River Watershed, Rocky River Watershed, and the Tuscarawas River Watershed in the County of Summit, Ohio. Vegetated riparian areas lessen the damage from such flooding by slowing runoff, enabling water to soak into the ground, and by absorbing excess flow during flood events; and,

Whereas, stream bank erosion within the Cuyahoga River Watershed, Rocky River Watershed, and the Tuscarawas River Watershed is a significant threat to public health and safety and public and private property, and vegetated riparian areas physically slow the rate of runoff and stabilize stream banks by anchoring the soil, thus reducing the erosive force of runoff and strengthening banks against high-velocity stream waters; and,

Whereas, the presence of natural vegetation on stream banks provides protection against erosive forces both within streams and on adjacent lands, whether publicly or privately owned; and,

Whereas, the protection of riparian areas results in the presence of plants best suited to each individual environment along a stream, with proven capability for survival and regeneration at no cost; and,

Whereas, the establishment of protected riparian areas provides a right-of-way for natural movement and relocation of stream channels, which can encroach upon adjacent land; and,

Whereas, vegetated riparian areas aid in filtering and trapping sediments, nutrients, chemicals, salts, septic discharge and other pollutants from runoff and floodwaters, thus helping to protect surface and ground water quality; and,

Whereas, vegetated riparian areas can provide a dense tree canopy that helps to maintain and improve the stability of stream water temperatures, thus protecting aquatic ecosystems and promoting a healthy environment that is diverse in the number of species of plants and animals, and helps to reduce the presence of aquatic nuisance species; and,

Whereas, the management of riparian areas can result in a diverse and interconnected riparian corridor that provides habitat to a wide array of wildlife; and,

Whereas, there is a watershed-wide effort to reduce the flooding and erosion within the Cuyahoga River Watershed, Rocky River Watershed, and the Tuscarawas River Watershed and to protect and enhance the water resources of the Cuyahoga River, Rocky River, and the Tuscarawas River and all tributaries, and the County of Summit recognizes its obligation as a part of the watershed to reduce flooding and erosion by controlling runoff within its borders; and,

Whereas, the water quality and quantity flowing through areas downstream is heavily dependent upon the protective measures and good stewardship adopted by upstream communities, regardless of the size of the upstream channel; and,

Whereas, the Summit Soil and Water Conservation District (Summit SWCD), the Natural Resources Conservation Service of the United States Department of Agriculture (NRCS, USDA), the Ohio Environmental Protection Agency (OEPA), and the United States Environmental Protection Agency (USEPA) recommend riparian setbacks as a valuable tool in an overall natural resource management program for flood risk reduction, erosion control, water quality management, and aquatic life habitat protection; and,

Whereas, studies undertaken by, and reviewed by the Ohio Environmental Protection Agency and other accredited independent scientific entities recommend the minimum widths for riparian setbacks; and,

Whereas, the Council of the County of Summit has reviewed and adopted the recommendations of the above government agencies, and the Council finds that in order to minimize encroachment on stream channels and the need for costly engineering solutions to protect structures and reduce property damage and threats to the safety of watershed residents; to protect and enhance the scenic beauty of the Cuyahoga, Rocky, and Tuscarawas Rivers, the quality of life of the residents of the County of Summit, and corresponding property values, it is necessary and appropriate to regulate the construction of structures and uses within a Riparian Setback along the banks of designated streams in the Cuyahoga River, Rocky River, and Tuscarawas River; and,

Whereas, Article X, Section 3 of the Ohio Constitution grants the County of Summit as a charter county, the legal authority to adopt land use and control measures for promoting the peace, health, safety, and general welfare of its citizens.

Whereas, 40 C.F.R. Parts 9, 122, 123, and 124 referred to as NPDES (National Pollutant Discharge Elimination System) Storm Water Phase II, require designated communities, including the County of Summit to develop a Storm Water Management Program to address the quality of storm water runoff during and after soil disturbing activities; now

THEREFORE, BE IT ORDAINED by the Council of the County of Summit, State of Ohio,

SECTION 1: That Title Seven of Chapter Nine of the Codified Ordinances of the County of Summit establishing Riparian Setbacks within the County of Summit read as follows:

SECTION 937.01: PUBLIC PURPOSE

A. It is hereby determined that the system of streams within the County of Summit contributes to the health, safety and general welfare of the residents of the County of Summit. The purpose of this Riparian Setback Ordinance is to protect and preserve the water quality within streams of the County of Summit and to protect residents of the County of Summit from property loss and damage because of flooding and other impacts of the stream. The method of implementing this ordinance is by controlling uses and developments within a Riparian Setback that would impair the ability of the riparian area to:

1. Reduce flood impacts by absorbing peak flows, slowing the velocity of floodwaters and regulating base flow.
2. Stabilize the banks of streams to reduce bank erosion and the downstream transport of sediments eroded from stream banks.
3. Reduce pollutants in streams during periods of high flows by filtering, settling and transforming pollutants already present in streams.
4. Reduce pollutants in streams during periods of high flows by filtering, settling and transforming pollutants in runoff before they enter streams.
5. Provide areas for natural meandering and lateral movement of stream channels.
6. Reduce the presence of aquatic nuisance species to maintain diverse and connected riparian vegetation.
7. Provide high quality stream habitats with shade and food to a wide array of wildlife by maintaining diverse and connected riparian vegetation.
8. Benefit the County of Summit economically by minimizing encroachment on stream channels and reducing the need for costly engineering solutions such as dams and riprap, to protect structures and reduce property damage and threats to the safety of watershed residents, and by contributing to the scenic beauty and to the environment of the County of Summit, the quality of life of the residents of the County of Summit and corresponding property values.
9. Protect the health, safety, and welfare of the citizens of the County of Summit.

B. The following regulation has been enacted to protect these services of riparian areas by providing reasonable controls governing structures and uses in riparian setbacks.

SECTION 937.02: APPLICABILITY, COMPLIANCE, AND VIOLATIONS

A. The provisions of this title shall apply to all lands within unincorporated areas that are within the jurisdiction of the County of Summit ~~and designated streams that border~~.

B. No preliminary plan, building, or zoning approvals shall be issued by the County of Summit without full compliance with the terms of these regulations where applicable.

C. Any person or organization who violates Section 937.07 of the Codified Ordinances shall be guilty of a minor misdemeanor and, upon conviction thereof, shall be subject to punishment as provided in Section 501.99 of the Codified Ordinances of the County of Summit and shall be required to restore the Riparian Setback through a plan approved by Summit SWCD.

D. The provisions of ~~937.07~~ this title may be enforced through civil or criminal proceedings brought by the County of Summit Prosecutor on behalf of the County of Summit.

SECTION 937.03: CONFLICTS WITH OTHER REGULATIONS AND SEVERABILITY

A. Where this ordinance imposes a greater restriction upon land than is imposed or required by any other provision of law, regulation, contract or deed, the provisions of this ordinance shall control.

B. These regulations shall not limit or restrict the application of other provisions of law, regulation, contract, or deed, or the legal remedies available there under, except as provided in point "A" of this section.

C. If any clause, section, or provision of these regulations is declared invalid or unconstitutional by a court of competent jurisdiction, validity of the remainder shall not be affected thereby.

SECTION 937.04: DEFINITIONS

1. BEST MANAGEMENT PRACTICES (BMPs): Conservation practices or protection measures which reduce impacts from a particular land use. Best Management Practices for construction are outlined in "Rainwater and Land Development, Ohio's Standard for Stormwater Management, Land Development, and Urban Stream Protection" prepared by the Ohio Department of Natural Resources.
2. DAMAGED OR DISEASED TREES: Trees that have split trunk, broken tops, heart rot, insect or fungus problems that will lead to imminent death, undercut root systems that put the tree in imminent danger of falling, lean as a result of root failure that puts the tree in imminent danger of falling, or any other condition that puts the tree in imminent danger of being uprooted or falling into or along a stream or onto a structure.
3. DEFINED CHANNEL: A natural or man-made depression in the terrain which is maintained and altered by the water and sediment it carries.
4. FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA): The agency with overall responsibility for administering the National Flood Insurance Program.

5. FINAL PLAT: A final tracing of all or a phase of a subdivision ~~in~~ and its complete survey information.
6. IMPERVIOUS COVER: Any surface that cannot effectively absorb or infiltrate water. This may include roads, streets, parking lots, rooftops, sidewalks and other areas not covered by vegetation.
7. NATURAL SUCCESSION: A gradual and continuous replacement of one kind of plant and animal group by a more complex group. The plants and animals present in the initial group modify the environment through their life activities thereby making it unfavorable for themselves. They are gradually replaced by a different group of plants and animals better adapted to the new environment.
8. NOXIOUS WEED: Any plant defined as a “noxious weed and rank vegetation” in Section 21.1 in the Codified Ordinances of the County of Summit, Ohio.
9. OHIO RAPID ASSESSMENT METHOD: A multi-parameter qualitative index established by the Ohio Environmental Protection Agency to evaluate wetland quality and function.
10. 100-YEAR FLOODPLAIN: Any land susceptible to being inundated by water from a base flood, which is the flood that has a one percent or greater chance of being equaled or exceeded in any given year. For the purposes of these regulations, the 100-year floodplain shall be defined by FEMA ~~or a site-specific floodplain delineation in conformance with standard engineering practices~~ and approved by ~~Summit SWCD~~ the County of Summit Department of Building Standards.
11. ORDINARY HIGH WATER MARK: The point of the bank or shore to which the presence and action of surface water is so continuous as to leave a district marked by erosion, destruction or prevention of woody terrestrial vegetation, predominance of aquatic vegetation or other easily recognized characteristic. The ordinary high water mark defines the channel of a stream.
12. POLLUTION: Any contamination or alteration of the physical, chemical, or biological properties of any waters that will render the waters harmful or detrimental to: public health, safety or welfare; domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses; livestock, wildlife, including birds, fish or other aquatic life.
 - “POINT SOURCE” pollution is traceable to a discrete point or pipe.
 - “NON-POINT SOURCE” pollution is generated by various land use activities rather than from an identifiable or discrete source, and is conveyed to waterways through natural processes, such as rainfall, storm runoff, or ground water seepage rather than direct discharge.
13. ~~PLAN~~, PRELIMINARY PLAN: A drawing of a major subdivision for the purpose of study and which, if approved, permits proceeding with the preparation of the final plat.

14. **RIPARIAN AREA:** A transitional area between flowing water and terrestrial ecosystems, which provides a continuous exchange of nutrients and woody debris between land and water. This area is at least periodically influenced by flooding. Riparian areas, if appropriately sized and managed, help to stabilize banks, limit erosion, reduce flood size flows and/ or filter and settle out runoff pollutants, or perform other functions consistent with the purposes of these regulations.
15. **RIPARIAN SETBACK:** The area set back from each bank of a stream to protect the riparian area and stream from impacts of development, and streamside residents from impacts of flooding and land loss through erosion. Riparian Setbacks are those lands within the County of Summit that fall within the area defined by the criteria set forth in these regulations.
16. **SOIL AND WATER CONSERVATION DISTRICT (SWCD):** An entity organized under Chapter 1515 of the Ohio Revised Code referring to either the Soil and Water Conservation District Board or its designated employees, hereinafter referred to as the Summit SWCD.
17. **SOIL DISTURBING ACTIVITY:** Clearing, grading, excavating, filling or other alteration of the earth's surface where natural or human made ground cover is destroyed and which may result in, or contribute to, erosion and sediment pollution.
18. **STREAM:** A surface watercourse with a well-defined bed and bank, either natural or artificial, which confines and conducts continuous or periodical flowing water (ORC 6105.01) in such a way that terrestrial vegetation cannot ~~take over~~ establish roots within the channel.
19. **STORMWATER POLLUTION PREVENTION PLAN (SWPPP):** The plan which describes all the elements of the stormwater strategy implemented during and after construction. The plan addresses erosion control and ~~abatement of excess~~ runoff quality.
20. **STORMWATER QUALITY TREATMENT:** The removal of pollutants from urban runoff and improvement of water quality, accomplished largely by deposition and utilizing the benefits of natural processes.
21. **VARIANCE:** A modification of the enforcement of the Riparian Setback Ordinance which will not be contrary to the public interest and where, due to conditions peculiar to this property and not the result of the action of the applicant, a literal enforcement of the ordinance would result in undue hardship to the applicant.
22. **WATERCOURSE:** A natural or artificial waterway, such as a stream or river, with a defined bed and channel and a definite direction of course that is contained within, flows through, or borders the community.
23. **WATERSHED:** An area of land that drains into a particular watercourse, usually divided by topography.

24. WETLANDS: Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, including swamps, marshes, bogs, and similar areas.

SECTION 937.05: ESTABLISHMENT OF A RIPARIAN SETBACK

- A. Riparian Setbacks are established as provided in this title.
- B. Streams addressed by this ordinance are those which meet the definition of "stream" in Section 937.04 of these regulations and appear are indicated on at least one of the following maps:
1. USGS topographical map
 2. Summit County Riparian Setback map
 3. Soils maps located in the Soil Survey for Summit County, Ohio, USDA, NRCS
- C. Widths of setbacks are measured as horizontal map distance outward from the ordinary high water mark on each side of a stream, and are established as follows:
1. A minimum of 300 feet on each side of all streams draining an area greater than 300 square miles.
 2. A minimum of ~~420~~ 100 feet on each side of all streams draining an area greater than 20 square miles and up to 300 square miles.
 3. A minimum of 75 feet on each side of all streams draining an area greater than 0.5 square mile (320 acres) and up to 20 square miles.
 4. A minimum of 50 feet on each side of all streams draining an area greater than 0.05 square mile (32 acres) and up to 0.5 square mile (320 acres).
 5. A minimum of 30 feet on each side of all streams draining an area less than 0.05 square mile (32 acres).
- D. The following are exempt from the terms and protection of this ordinance: grassy swales, roadside ditches, drainage ditches created at the time of the a subdivision to convey stormwater water to another system, tile drainage systems, and stream culverts.
- E. The following shall ~~also~~ apply to the Riparian Setback:
1. Where the 100-year floodplain is wider than the Riparian Setback on either or both sides of the stream, the Riparian Setback shall be extended to the outer edge of the 100-year floodplain. The 100-year floodplain shall be defined by FEMA ~~or a site-specific floodplain delineation in conformance with standard engineering practices~~ and approved by the ~~Summit SWCD~~ County of Summit Department of Building Standards.

2. Because the gradient of the riparian corridor significantly influences impacts on the stream, the following adjustment for steep slopes will be integrated into the Riparian Setback formulae for width determination:

Average Percent Slope	Width of Setback
15% - 20%	Add 25 feet
21% - 25%	Add 50 feet
> 25%	Add 100 feet

Average ~~watershed~~ streambank slope is to be calculated using methodology outlined in the "Ohio Supplement to Urban Hydrology for Small Watersheds, Technical Release Number 55 (TR-55)" by USDA, NRCS.

3. Where wetlands protected under federal or state law are identified within the Riparian Setback, the Riparian Setback shall consist of the full extent of the wetlands plus the following additional setback widths:
- A 50 foot setback extending beyond the outer boundary of a Category 3 wetlands
 - A 30 foot setback extending beyond the outer boundary of a Category 2 wetlands
 - No additional setback will be required adjacent to Category 1 wetlands
4. Wetlands shall be delineated by a qualified professional under guidelines established by the US Army Corps of Engineers and Ohio Environmental Protection Agency and the site survey delineation approved by ~~these~~ the appropriate agencies. All wetland delineations shall also include the latest version of the Ohio Rapid Assessment Method for wetland evaluation approved at the time of application of the regulations.
5. The applicant shall be responsible for delineating the Riparian Setback, including any expansions or modifications as required by B through D of this section, and identifying this setback on all subdivisions, land development plans, and/or building permit applications. This delineation shall be done at the time of application of the preliminary plans, or all plans that are required, or at the time of submission of any permit applications. This delineation shall be subject to review and approval by the Summit SWCD. As the result of this review, the Summit SWCD may require further studies from the applicant.
6. Prior to any soil disturbing activity, the Riparian Setback shall be clearly delineated with construction fencing or other suitable material by the ~~landowner~~ applicant on site, and such delineation shall be maintained throughout soil-disturbing activities. The delineated area shall be maintained in an undisturbed state unless otherwise permitted by these regulations. All fencing shall be removed when a development project is completed.
7. No approvals or permits shall be issued by the County of Summit or Township prior to delineation of the Riparian Setback in conformance with these regulations.

8. Upon completion of an approved subdivision, the Riparian Setback shall be permanently recorded on the plat records for the County of Summit.

SECTION 937.06: USES PERMITTED IN THE RIPARIAN SETBACK

A. The following uses are permitted by right within the Riparian Setbacks without prior approval.

Open space uses that are passive in character shall be permitted in the Riparian Setback including, but not limited to, those listed in 1 through 4 of this section. No use permitted under these regulations shall be construed as allowing trespass on privately held lands.

Alteration of this natural area is strictly limited. Except as otherwise provided in these regulations, the Riparian Setback shall be preserved in its natural state.

1. **Recreational Activity.** Passive recreational uses, as permitted by federal, state, and local laws, such as hiking, non-motorized bicycling, fishing, hunting, picnicking and similar uses and associated structures including boardwalks, pathways constructed of pervious material, picnic tables, and wildlife viewing areas.
2. **Removal of Damaged or Diseased Trees.** Damaged or diseased trees may be removed. Because of the potential for felled logs and branches to damage downstream properties and/or block ditches or otherwise exacerbate flooding, logs and branches resulting from the removal of damaged or diseased trees that are greater than 6 inches in diameter, shall be anchored to the shore or removed from the 100-year floodplain.
3. **Revegetation and/or Reforestation.** The revegetation and/or reforestation of the Riparian Setback shall be allowed without approval of the Summit SWCD. Species of shrubs and vines recommended for stabilizing flood prone areas along streams within the County of Summit are listed in the Appendix.
4. **The County of Summit Engineer maintains the right of access to all streams** within the County of Summit for the purposes outlined in the Ohio Revised Code, Sections 6131.01 to 6131.64, 6133.01 to 6133.15, 6135.01 to 6135.27, and 6137.05.1.

B. The following uses are permitted by right within the Riparian Setbacks with prior approval of the design.

1. **Stream bank Stabilization/Erosion Control Measures.** Best Management Practices (BMP's) for stream bank stabilization or erosion control may be allowed if such practices are within permitted uses by the local, state, and federal government regulations and are ecologically compatible and emphasize the use of natural materials and native plant species where practical and available. Such stream bank stabilization/ erosion control practices shall only be undertaken upon approval of a Stormwater Pollution Prevention Plan (SWPPP or SW3P) by the Summit SWCD.

2. Crossings. In reviewing plans for stream crossings, the township may confer with the Summit SWCD, the Ohio Department of Natural Resources, Division of Natural Areas; the Ohio Environmental Protection Agency, Division of Surface Water; the County of Summit Engineer; the Department of Environmental Services of Summit County; the Summit County Health Department; or other technical experts as necessary.
 - a. Limited crossings of designated streams through the Riparian Setback by vehicles, storm sewers, sewer and / or water lines, and public utility lines will be per the approval of local, county, and state governing agencies and as a part of the regular subdivision review process.
 - b. One driveway crossing per stream per tax parcel will be allowed for individual landowners.
 - c. Roadway crossings for major and minor subdivisions, open space subdivisions, or any other non-single family residential use shall be designed and constructed per the County of Summit Engineer's design standards and as approved by the Summit County Planning Commission and approving township. If more than ~~one~~ two crossings per 1,000 linear feet of stream center is required for these areas, the applicant must apply for a variance.
 - d. All roadway crossings shall be perpendicular to the stream flow and shall minimize disturbance to the Riparian Setback and shall mitigate any necessary disturbances.
3. Placement of stormwater retention or detention facilities may be considered within the Riparian Setback if:
 - a. Stormwater quality treatment that is consistent with current state standards is incorporated into the basin.
 - b. The stormwater quality treatment basin is located at least 50 feet from the ordinary high water mark of the stream.

SECTION 937.07: USES PROHIBITED IN THE RIPARIAN SETBACK

The following uses are specifically prohibited within the Riparian Setback:

- A. Construction. There shall be no structures of any kind, except as permitted under these regulations.
- B. Dredging or Dumping. There shall be no drilling for petroleum or mineral products, mining activity, filling or dredging of soil, spoils, ~~liquid or solid materials~~, or any material—natural or man-made—except as permitted under these regulations.
- C. Roads or Driveways. There shall be no roads or driveways, except as permitted under these regulations.

D. Motorized Vehicles. There shall be no use of motorized ~~and non-motorized~~ vehicles of any kind, except as permitted under these regulations.

E. Modification of Natural Vegetation. Modification of the natural vegetation shall be limited to conservation maintenance that the landowner deems necessary to control noxious weeds; for such plantings as are consistent with these regulations; for such disturbances as are approved under these regulations; and for the passive enjoyment, access and maintenance of landscaping or lawns existing at the time of passage of these regulations.

Nothing in this section shall be construed as requiring a landowner to plant or undertake any other activities in the Riparian Setback provided the landowner allows for natural succession.

F. Parking Lots. There shall be no parking lots or other human made impervious cover, except as permitted under these regulations.

G. New surface and/or subsurface sewage disposal or treatment area. Riparian Setbacks shall not be used for the disposal or treatment of sewage except for:

1. Undeveloped parcels that have received site evaluation approval and / or permit approval prior to the enactment of this ordinance.
2. Dwellings served by disposal / treatment systems existing at the time of passage of these regulations when such systems are properly sited (approved site evaluation) and permitted or in accordance with the Summit County Health Department and / or the Ohio Environmental Protection Agency. Existing failing systems which are located within the Riparian Setback can be upgraded with approval of the Summit County Health Department and / or the Ohio Environmental Protection Agency.

SECTION 937.08: NON-CONFORMING STRUCTURES OR USES IN THE RIPARIAN SETBACK

A. Structures and uses within the Riparian Setback, existing at the time of passage of these regulations, that are not permitted under these regulations may be continued but shall not be expanded except as set forth in this title.

B. If damaged or destroyed, these structures or uses may be repaired or restored within two years from the date of damage /destruction or the adoption of these regulations, whichever is later, at the property owners own risk.

C. A residential structure or use within the Riparian Setback existing at the time of passage of these regulations may be expanded subject to the provisions of 1. through 3. below:

- C. 1. The expansion conforms to existing zoning regulations.
2. The expansion must not impact the stream channel or the 100-year flood plain.
3. The expansion must not exceed an area of 15% of the ~~total~~ footprint of existing structure or use that lies within the Riparian Setback. Expansions exceeding 15% of the ~~total~~ footprint within the Riparian Setback must be obtained through the variance process.
- D. Non-residential structure or use expansions will be permitted only through the variance process.

SECTION 937.09: BOUNDARY INTERPRETATION AND APPEALS PROCEDURE

- A. When ~~a landowner or an~~ applicant disputes the boundary of the Riparian Setback or the ordinary high water mark of a stream, the ~~landowner or~~ applicant shall submit evidence to the Summit SWCD that describes the boundary, presents the ~~landowner or~~ applicant's proposed boundary and presents all justification for the proposed boundary change.
- B. The Summit SWCD shall evaluate all materials submitted and shall make a written recommendation to the Township Board of Zoning Appeals or the Summit County Planning Commission within a reasonable period of time not to exceed sixty days. ~~a A copy of which this recommendation shall be submitted to the landowner or applicant.~~ If during this evaluation the Summit SWCD requires further information to complete this evaluation, ~~he or she may require this to be provided by the landowner or applicant.~~ the applicant may be required to provide additional information.
- C. ~~Any party aggrieved by any such determination or other decision or determination under these regulations may appeal to their Township Board of Zoning Appeals for a variance.~~ The Township Board of Zoning Appeals or the Summit County Planning Commission shall decide such boundary disputes. The party contesting the location of the Riparian Setback or the ordinary high water mark of the streams as determined by these regulations shall have the burden of proof in case of any such appeal.

SECTION 937.10: VARIANCES WITHIN RIPARIAN SETBACK

- A. Applications for variances to the provisions of this title shall be submitted as provided in 1. and 2. below:
1. In Townships which have adopted these regulations into their zoning codes, applications for variances ~~may~~ shall be submitted to the Township Board of Zoning Appeals.
2. In Townships which have not adopted these regulations into their zoning codes, and do not have their own riparian setback regulations, applications for variances ~~may~~ shall be submitted to the Summit County Planning Commission.

- B. The Township Board of Zoning Appeals or the Summit County Planning Commission, shall consult with representatives from the Summit SWCD; the Ohio Department of Natural Resources, Division of Natural Areas; the Ohio Environmental Protection Agency, Division of Surface Water; the County of Summit Engineer; the Department of Environmental Services of Summit County; the Summit County Health Department; or other technical experts as necessary to consider variance requests.
- C. Expansions of residential structures or uses exceeding 15% of the footprint area and expansions of all non-residential structures or uses are subject to provisions 1. through 4. below:
1. The expansion conforms to the existing zoning regulations.
 2. The expansion must not impact the stream channel or the 100-year floodplain.
 3. The expansion of a non-residential structure or use must not affect upstream or downstream hydrologic conditions which could cause damage from flooding or streambank erosion to landowners in those areas. The A hydrologic study must be completed by non-residential applicants only as a process of the variance application.
 4. The expansion of a non-residential structure or use will not exceed 25% of the of the footprint area. The 25% expansion limit is per the portion of the structure or use that lies within the Riparian Setback.
- D. Requests for variances for subdivisions will be considered for the following:
1. An additional stream crossing or crossings for a subdivision or open space development which is necessary for the health, welfare, and safety of the residents of the subdivision.
 2. A reduction of the setback width, not to exceed 10% of the prescribed Riparian Setback width.
- E. No variances shall be granted for expansion of the following structures or uses:
1. Facilities which use, store, distribute, or sell petroleum-based products or any hazardous materials. Such facilities include, but are not limited to: asphalt plants, dry cleaners, gasoline service stations, and road maintenance facilities.
 2. Facilities which use, store, distribute, or sell products which may contribute higher than acceptable concentrations of dissolved or particulate matter to stormwater runoff around the facility. Such facilities include, but are not limited to: landfills or transfer stations, junk yards, recycling facilities, quarries and borrow pits, sand and gravel extraction operations, and road salt storage barns.
- F. In reviewing whether to grant variances, the Township Board of Zoning Appeals or the Summit County Planning Commission shall consider the following:

- F. 1. The extent to which the requested variance impairs the functions of the riparian area. This determination shall be based on sufficient technical and scientific evidence as provided by the applicant and the agencies listed in 937.10.A. through E. above.
2. The soil type and natural vegetation of the parcel as well as the percentage of the parcel that is in the 100-year floodplain.
3. The degree of hardship these regulations place on the ~~landowner~~ applicant and the availability of alternatives to the proposed activity.

SECTION 937.11: INSPECTION OF RIPARIAN SETBACK

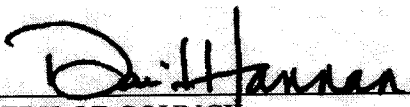
- A. The Riparian Setback shall be inspected by the Summit SWCD:
1. When a preliminary subdivision plat or other land development plan is submitted to the County of Summit.
 2. When a building or zoning permit is requested.
 3. Prior to any soil disturbing activity to inspect the delineation of the Riparian Setback as required under these regulations.
- B. The Riparian Setback shall also be inspected annually or as time permits by the Summit SWCD or approved monitoring entity for compliance with any approvals under these regulations or at any time evidence is brought to the attention of the Summit SWCD that uses or structures are occurring that may reasonably be expected to violate the provisions of these regulations.
- C. Violations of these regulations will be handled as noted in Section 937.02.C.

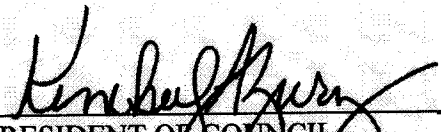
SECTION 2

Provided this ordinance receives the affirmative vote of eight members, it shall take effect and be in force at the earliest time provided by law.

INTRODUCED March 4, 2002

ADOPTED April 29, 2002


CLERK OF COUNCIL


PRESIDENT OF COUNCIL

APPROVED April 30, 2002


EXECUTIVE by Karen Doty

May 29, 2002
ENACTED EFFECTIVE

On Voice Vote: YES: Callahan, Crossland, Gallagher, Heydorn, King, Norris, Smith, Teodosio, Zurz NO: Congrove, Crawford